

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7435 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASHOKBHAI ANANDJI DAMA

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/04/98

CAV JUDGEMENT

This petition under article 226 of the Constitution challenges the order dated 22nd July, 1997 passed by the State of Gujarat in Food and Civil Supplies Department dismissing the petitioner's appeal against the order dated 18.12.95 passed by Collector Kheda, respondent no.2 for confiscation for commodities to the tune of Rs.3,99,578/- under the provisions of Section 6-A of the Essential Commodities Act, 1955 (hereinafter

referred to as 'The Act').

2. The facts leading to filing of the present petition, briefly, stated are as under:-

The petitioner is running a Petrol Diesel Pump in the name of Hari Om Petroleum situated at Village Dabhan, Taluka Nadiad of Kheda District on National Highway No.8. A licence under the Gujarat Essential Articles (licencing control and stock declaration) order 1981 was granted by Mamlatdar, Nadiad for selling in retail petrol/diesel. On 23.11.94, the officers from Food and Civil Supplies Department had made a surprise visit at the aforesaid petrol pump and had detected certain irregularities. The first irregularity was that meter readings were not correct in as much as when the officers of the Oil company had visited the petitioner's pump on 21.11.94 at 12'o'clock certain meter readings were recorded and the same meter readings were shown as opening meter readings for 22.11.94. The second irregularity was that no proper accounts were being maintained for the stock of petrol/diesel. There was no display boards at the petrol pump for showing the stock or price of petrol and diesel. The third irregularity was that at the time of inspection by the officers of the Food and Civil Supply Department a tanker bearing No.GTG-1925 with 10,000 liters of kerosene was found in the compound of the petitioner's petrol pump. The destination of the tanker was Shreeji Corporation, Kapadvanj and the bill to that effect was produced by the Manager of the Petrol Pump but no satisfactory explanation was offered by the Manager as to why the said tanker was found in the petitioner's petrol pump compound. In view of the aforesaid irregularities the Dy. Director of Civil Supplies, Gandhinagar seized the following :

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Details of Seized Price Total  
goods Quantity Rs.Ps. Rs.Ps.  
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Petrol	2000 litre	19.67	39,340=00
Diesel	11162 litre	7.67	87,844=44
Cost of Tanker	2,50,000=00		
bearing No.GTG-1925			
Contents of Tanker	10000 litres		
	of kerosene		22,394=00

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Total Rs. 3,99,578=94  
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3. The petitioner was thereafter given notice dated 17.4.95 (Annexure B) to show-cause why action should not be taken against the petitioner for the aforesaid illegalities and irregularities including confiscation under Section 6-A of the Act. The petitioner submitted his reply in the month of April 1995, which is produced at Annexure C to the petition. The petitioner denied the allegations and further submitted that the petitioner had nothing to do with the tanker in question except that the tanker had come to petitioner's petrol pump for filling in diesel and that owner of the said tanker Shri Girishbhai J Bhanushali, running business in the name of Shreeji Corporation, was getting diesel filled in his tanker from the petitioner's petrol pump on credit and therefore the tanker was found to be in the petitioner's compound and that the bill was also produced by the driver of the tanker. After considering the petitioner's reply and after hearing him personally, the Collector, Kheda passed order dated 18.12.95 (Annexure D) holding that the petitioner was guilty of the irregularities alleged against him and as the petitioner's explanation was not found to be satisfactory, therefore all the commodities and the tanker seized were ordered to be confiscated. Aggrieved by the order the petitioner filed Appeal No.15/96 before the State Government. The State Government concurred with the findings of the Collector and dismissed the appeal by its order dated 22.7.97 at Annexure H to the petition. It is the aforesaid order of the State Government which is challenged in this petition.

4. The learned counsel for the petitioner submitted that the respondent authorities had erred in drawing inference that the tanker with kerosene was kept in the compound of the petitioner's petrol pump for the purpose of mixing kerosene with petrol or diesel. It is submitted that the tanker was brought to the petitioner's petrol pump only for the purpose of filling in diesel as the owner of the tanker was getting diesel from the petitioner on credit. It is further submitted that the inspection team had not found kerosene being mixed with petrol or diesel and therefore merely because the tanker was found to be in the petitioner's compound it cannot be said that the petitioner was guilty of any irregularities as alleged. The findings given by the Authorities that there was some tampering with the records viz. the readings recorded by the Officers of the Oil Company on 21.11.94 were also not justified. On the other hand Mr.T.H.Sompura, learned AGP supported the orders of the authorities.

5. Having heard the learned counsel for the parties, this court is of the view that since the authorities have given findings of fact on the basis of the material on record, it is not open to this court to reappraise the evidence or to substitute the findings of facts given by the Authorities. The Authorities have found that when the Inspection Team from Food and Civil Supplies Department of the State Government visited the petitioner's petrol pump, the Manager of the Petrol pump had produced the bill by which kerosene filled in the taken in question was to be transported to destination at Kapadvanj. Dabhan is not on the road from Koyali Refinery to Kapadvanj. Even the tanker was got released by the petitioner by submitting bank guarantee although accordingly to the petitioner the tanker did not belong to the petitioner. It is, therefore, not possible to believe the petitioner's contention that the tanker was brought to the petrol pump only for the limited purpose of filling in diesel from the petitioner's petrol pump on credit. The authorities have also found that at the time of inspection it was found that while the density of petrol was found to be okay there was difference in density of diesel. The tampering with the record showing meter readings on 21.11.94 and a tanker filled with 10000 liters of kerosene found in the compound of the petitioner's petrol pump and the petitioner furnishing bank guarantee for its release justify the inferences drawn by the respondents. It is therefore not possible to accept the petitioner's case that there was no irregularity committed by the respondents.

6. It was contended by the learned Counsel for the petitioner that the Collector had not supplied the documents relied upon by him and the State Government had also not supplied the petitioner FSL report relied upon by it and nor was it relied upon by the Collector. As far as the grievance about non-compliance with the principles of natural justice by the Collector is concerned, it is required to be noted that the petitioner had not made any such grievance before the State Government and, therefore, it is not necessary to examine the same. As far as the grievance against the State Government is concerned, even if the FSL report were not to be taken in account the very fact that the petitioner had got the tanker filled with 10000 liters of kerosene released after giving the bank guarantee although according to the petitioner's own say he had nothing to do with the tanker (except that the tanker was brought to his petrol pump for filling in diesel on Credit) and in view of the fact that the kerosene tanker was supposed to

travel from the Refinery to Kapadvanj and that Dhaban is not on the same route, it could be safely concluded that the kerosene tanker was brought to the petitioner's petrol pump for the purpose of mixing the same with diesel or petrol.

7. The next contention of the learned Counsel for the petitioner was that assuming that there was a case for confiscation, there was no case for confiscation of all the commodities in their entirety and the tanker seized by the authorities. The learned Counsel placed reliance on the decision of the decisions reported in AIR 1994 SC, Pg.2062, 1995(1) GLH, Pg.833, 1987 2 GLH UJ Pg.33 and 1983 GLH Pg.34. It is submitted that this was the first contravention and that there is nothing on record that the petitioner was involved in any such irregularity or illegality earlier and that the kerosene tanker was found with 10000 liters of kerosene in fact and therefore, the Authorities had erred in confiscating the entire quantity of goods seized.

8. Having heard the learned Counsel for the parties on the aforesaid question, it appears to the court that in view of the nature of the irregularities detected by the Authorities while the authorities were certainly justified in taking a strict view of the matter, at the same time since findings given by the Authorities go to show that there was more of an attempt to indulge in the illegal practice rather than actual commission of the illegality by keeping the kerosene tanker within the compound of the petrol pump. It would, therefore, be just and proper to modify the order of confiscation to provide that the authorities shall release the entire quantity of petrol (i.e. 2000 litres) but the authorities shall confiscate 50% of the quantity of diesel, 75% of the price of the tanker and 100% of the quantity of kerosene seized on 23.11.1994 as mentioned in para 2 above.

9. In the result, the petition is partly allowed only to the extent of modifying the quantities of petrol and diesel and the value of the tanker to be confiscated and the authorities shall instead confiscate 50% of the quantity of diesel, 75% value of the tanker and 100% of the quantity of kerosene as mentioned in the seizure order dated 23.11.94 as quoted in the earlier para of this judgement. Rule made absolute to the aforesaid extent only. There shall be no order as to costs.

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